

CHAPTER 9
VICTIM ASSISTANCE PROGRAM

[Prior to 9/20/89, see Public Safety[661] Ch 17]

DIVISION I
ADMINISTRATION

61—9.1(912) Definitions.

“*Board*” means crime victim assistance board.

“*Department*” means Iowa department of justice.

“*Director*” means director of the crime victim assistance division established in the department of justice.

61—9.2(912) Board.

9.2(1) A crime victim assistance board is established pursuant to Iowa Code section 912.2A.

9.2(2) Members of the board shall serve terms for three years and are eligible for reappointment to the board by the attorney general.

9.2(3) The initial term of the board members shall commence on July 1 of the state fiscal year.

61—9.3(912) Expenses.

9.3(1) Board members shall be reimbursed from the victim’s compensation fund for expenses actually and necessarily incurred in the discharge of their duties including attendance at board meetings, board committee meetings, and other activities on behalf of the board as designated by the board chair and approved by the department. Reimbursement for expenses shall conform with guidelines established by the department of revenue and finance.

9.3(2) A member of the board may receive, in addition to actual expense reimbursement, a per diem which conforms with guidelines established by the department of revenue and finance.

9.3(3) Expenses of the board and individual members shall be submitted to the director.

61—9.4(912) Chair of the board.

9.4(1) The attorney general shall select one of the members of the board to serve as chair of the board. The chair shall serve at the pleasure of the attorney general.

9.4(2) A member who is chair of the board and relinquishes or is removed as the chair may maintain board membership for the remainder of the term for which the member was originally appointed.

61—9.5(912) Resignations.

9.5(1) Resignations from the board shall be made to the attorney general.

9.5(2) Whenever a member of the board ceases to have the statutory qualifications for appointment to the board, that member shall be considered to have resigned and a vacancy shall occur on the board.

9.5(3) A board member shall be deemed to have submitted a resignation from the board if any of the following events occur:

a. The member does not attend three or more consecutive regular meetings of the board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least 30 days apart.

b. The person attends less than one-half of the regular meetings of the board within any period of 12 calendar months beginning July 1. This paragraph applies only to such a period beginning on or after the date when the person is appointed to the board.

c. If the member receives no notice and had no knowledge of a regular meeting and gives the attorney general a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this rule.

d. The attorney general at the attorney general's discretion may accept or reject such resignation. If the attorney general accepts it, the attorney general shall notify the member, in writing, that the resignation is accepted pursuant to this rule. The attorney general shall then make another appointment to fill the vacancy.

61—9.6(912) Vacancies. Barring unusual circumstances, vacancies on the board shall be filled within 45 days after the attorney general is advised of the vacancy. Vacancies shall be filled for the remainder of the vacant term.

61—9.7(912) Meetings. The board shall meet a minimum of once per quarter. The board may also meet at the call of the chair or upon the written request to the chair of at least five members of the board.

61—9.8(912) Duties of board. The board shall adopt rules pursuant to Iowa Code chapter 17A relating to the administration of the crime victim assistance division including the adoption of administrative rules relating to the following:

1. Administration of grants received under the federal Victims of Crime Act of 1984 pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601, as amended by the Children's Justice and Assistance Act of 1986, Pub. L. No. 99-401, 100 Stat. 903 and as amended by the Anti-Drug Abuse Act of 1988, Title VII, subtitle D, Pub. L. No. 100-690.

2. Administration of the Family Violence Prevention and Services Act grant pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. Section 10401, reauthorized in 1988, Pub. L. No. 100-294.

3. Administration of the domestic abuse and rape crisis funds and the Iowa domestic abuse hotline funds provided in Iowa Code chapter 236.

4. Administration of other grants or funds available by public law for victim assistance and administered by the department.

5. Administration of the victim compensation program provided in Iowa Code chapter 912.

6. Administration of sexual abuse examination payments as provided in Iowa Code section 709.10.

7. Appeal procedures for victim compensation claims denied by the department.

8. Appeal procedures for grants administered by the department and denied by the board.

61—9.9(912) Director and staff. The attorney general shall employ a director and staff for the victim assistance division and they shall be employees of the department.

61—9.10(912) Duties of department. In addition to the duties contained in Iowa Code section 13.13, the department shall:

1. Administer other funds, grants, or programs for victim assistance created by public law or the department.

2. Provide administrative support to the board.

3. Enter into agreements under Iowa Code chapter 28E or other law including agreements with other state agencies and political subdivisions for the transfer to the department of funds authorized by law for victim service programs.

4. Accept, use, and dispose of contributions of money, services, and property, which are made available by an agency or department of the state or any of its political subdivisions, the federal government, a private agency, or an individual, that are specifically designated for crime victim assistance programs.

61—9.11 to 9.24 Reserved.

DIVISION II
CRIME VICTIM COMPENSATION

61—9.25(915) Administration of the crime victim compensation program. The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to: Crime Victim Assistance Division, Lucas State Office Building, Ground Floor, 321 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.26(915) Definitions. For rules of the crime victim compensation program of the crime victim assistance division of the department of justice, the following definitions apply:

“Affinity” means the relationship of persons who are related by marriage, cohabitation, or engagement to be married.

“Applicant” includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 915.80(6).
2. A person responsible for the care and maintenance of a victim.
3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.
4. In the event of a victim’s death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.

5. A legal representative authorized to act on behalf of any of the persons listed above.

“Board” means the crime victim assistance board of the department of justice.

“Causal relationship” means that the crime would not have occurred without the action of the victim. A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.

“Claimant” means an applicant who has been found to be eligible for compensation.

“Cohabiting” means living in the same household. It is not necessary to establish that a sexual relationship exists between the parties.

“Compensation” means moneys awarded by the division as authorized in Iowa Code chapter 915.

“Consent” means to agree to a course of action or to voluntarily allow what is planned or done by another.

“Counseling” means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person’s sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling; conversation in a nonprivate setting such as the common area of a shelter or a courthouse; transportation; or attendance at medical procedures, law enforcement interviews or civil and criminal justice proceedings.

“Crime” as defined in Iowa Code section 915.80 includes:

1. Conduct punishable as a misdemeanor or a felony.
2. Property crimes including but not limited to robbery, residential burglary, and residential arson, where there is a threat of personal injury or harm against a person.
3. Violation of a custody order in which the custodial parent suffers injury.

“Denial” means disqualification of an application or reduction in the amount of compensation paid.

“Department” means the department of justice, attorney general’s office.

“Dependent” means a person who is unable to care for himself or herself due to injury, disability, or minor age status.

“Director” means the director of the crime victim assistance division established in the department of justice.

“Division” means the crime victim assistance division of the department of justice.

“Incitement” means to urge forward or to goad to action.

“Income” or *“wages”* means gross income or gross wages.

“Medical care” means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

“Medically necessary” means items and services, prescribed by a medical provider under the prescriptive authority of the medical provider’s license, which are reasonably necessary to facilitate the victim’s physical and emotional recovery from the compensable crime.

“Pecuniary loss” means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim’s county of residence, or health insurance premiums covered by an employer previous to the victim’s disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

“Personal injury” or *“injury”* means bodily harm or mental suffering and shall include a victim’s pregnancy or miscarriage resulting from a crime.

“Program” means the crime victim compensation program of the department of justice.

“Provocation” means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

“Public funds” means moneys provided by federal, state, county, city or other local government.

“Reasonable charges” means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(915) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

1. To prepare appropriate forms for the filing and processing of compensation applications.
2. To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the director.
3. To receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The department may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) *Application postmarked.* An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) *Good cause.* In determining whether there is good cause for waiver of the two-year application filing requirement, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) *Multiple erroneous claims.* When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) *Program effective date.* The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date are not eligible for compensation.

9.28(5) *Concurrent primary and secondary applications.* A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) *Concurrent secondary victim applications.* A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent secondary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(2). The department may waive the requirements of Iowa Code section 915.84(2) if good cause is shown.

9.29(1) *Law enforcement report sources.* The department finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(2):

- a. Sheriffs and their regular deputies.
- b. Marshals and police officers of cities.
- c. Peace officers of the department of public safety.
- d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.
- e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.
- f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.
- g. Correctional officers, including parole and probation officers.
- h. County and state prosecutors.
- i. An employee of the department of human services having jurisdiction to investigate the incident.
- j. A magistrate or judge of the Iowa court system.

9.29(2) *Elements of a report.* A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

- a. The nature of the crime,
- b. The location of the crime,
- c. The name, whereabouts and description of the suspect, if known, and
- d. The names of witnesses, if known.

9.29(3) *Law enforcement record.* A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) *Good cause.* In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.29(5) *Child victim.* If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(6) *Dependent adult victim.* If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(7) *Sexual abuse victim.* For a victim of sexual abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report.

9.29(8) *Domestic abuse victim.* For a victim of domestic abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a pro se protection order pursuant to Iowa Code chapter 236 is entered by the court and the victim files a subsequent law enforcement report.

9.29(9) *Victim of a sexually violent predator.* For a victim of sexual abuse, the department finds good cause to waive the 72-hour reporting requirement when the offender is referred pursuant to Iowa Code chapter 229A.

61—9.30(915) *Cooperation with law enforcement.* To be eligible for compensation, the victim of crime must cooperate with the reasonable requests of law enforcement.

9.30(1) *Reasonable cooperation.* Reasonable cooperation by the victim may include, but is not limited to, the following:

- a. Providing law enforcement with a true and accurate report of the crime.
- b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested including the review of photographs, composites, and lineups.
- c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) *Determination of cooperation.* In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) *Polygraph testing.* In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) *Sexual abuse victim.* A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) *Domestic abuse victim.* A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The division shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) *Consent, provocation, and incitement.* In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)“a,” the division may consider factors including, but not limited to, the following:

- a. Whether charges are filed against the suspect;
- b. Whether the victim attempted to withdraw from the incident;
- c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;
- d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;
- e. The age of the victim; and
- f. Comparable size or strength of the victim and suspect.

9.31(2) *Additional assessment of consent.* In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)“a,” the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) *Consent in intoxicated driving cases.* A victim who was the passenger in the vehicle of a driver who has been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The division may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.31(4) *Additional assessment of provocation and incitement.* In assessing the causal nature of provocation or incitement pursuant to Iowa Code section 915.87(2)“a,” the division may consider law enforcement documentation that indicates:

a. *Retaliatory action.* The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. *Gang action.* The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. *Mutual combat.* The crime was an incident of mutual combat if the victim:

- (1) Initiated a physical altercation;
- (2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or
- (3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. *Exception to mutual combat.* Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) *Victim's criminal act.* Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) *Determination of eligibility.* A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.32(2) *Reopening applications.* Pursuant to Iowa Code section 915.83(2), the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that indicates that there is reason to deny the application. The reopening of a denied or approved case is at the discretion of the administrator for the compensation program.

9.32(3) *Withdrawal of application.* An applicant may withdraw the application for compensation from consideration.

9.32(4) *Maximum compensation.* Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) *Preliminary eligibility determination.* The program must determine that the application is likely to be eligible based on documentation available including, at minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) *Documentation.* To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) *Emergency award decision.* A decision denying an emergency award shall not be appealable.

9.33(4) *Offset.* Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) *Benefit limits.* Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) *Payer-of-last-resort.* The program is a payer-of-last-resort pursuant to federal law 42 U.S.C. 10602(1403). Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime.

9.34(3) *Voluntary financial programs.* Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) Insurance providers. Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or sign the required assignment of benefits within a reasonable time frame.

9.34(5) Supplanting of funds prohibited. Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime.

61—9.35(915) Computation of benefit categories. The division shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section 985.86.

9.35(1) Medical care. Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 150A, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

a. Medical care sanctioned by sovereign nations and tribes. Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

b. Medical counseling costs. Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. Medical care for homicide victim survivors. Compensation may be paid to the spouse, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical care which are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. Medical equipment and property alteration. Compensation may be paid for equipment and property alteration which are prescribed as medically necessary care due to injury from the crime.

e. Medical supplies. Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. Medical care for pregnancy. Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for care of the victim shall be paid. Expenses incurred for care of a newborn child are not compensable.

g. Medical devices. Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, prosthetic device, wheelchair, and medication that was taken, lost or destroyed during the crime.

h. Transportation for medical emergency. Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limits will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. Transportation for nonemergency care. Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for nonemergency care will be reimbursed at the state rate for boards and commissions per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was provided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) Medical care records. When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) Mental health counseling. Compensation may be paid for the reasonable costs of mental health counseling for eligible crime victims and survivors of a homicide victim. When preexisting mental health issues are addressed during crime-related counseling, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the professional licensing board. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes which must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) Mental health counseling records. When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include, but not be limited to, a summary of the initial evaluation, any preexisting mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider shall submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed \$3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) *Victim service counseling.* Reasonable charges for counseling provided by a victim counselor as defined in Iowa Code sections 236A.1 and 915.20A, when fees for services to the general public for services of a similar nature have not previously been established, may be paid within the following guidelines:

a. Counselors funded with VOCA. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act fund shall not be eligible for compensation payment.

b. Computation of victim service counseling expenses. Counseling services provided to an eligible victim by a victim counselor may be compensated as follows:

(1) Individual counseling at an hourly rate of \$35.

(2) Group counseling at an hourly rate of \$20.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.35(6) *Victim service counseling records.* A record of each counseling session shall be maintained in the victim's file including the date of service, the length of service, the name of the victim counselor who provided the service, the general topics addressed, and referrals made.

9.35(7) *Counseling with the perpetrator.* Compensation for mental health or victim service counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and the victim is allowed to confront the perpetrator regarding the effects of the crime.

9.35(8) *Family counseling.* Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(9) *Lost wages or income.* Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of injury from crime or as a result of cooperation with the investigation or prosecution of the crime. Lost wages or income due to crime is determined as follows:

a. Gross wages computed. Lost wages are computed as the gross rate of pay times the number of scheduled hours of work missed.

b. Variable income. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

c. Self-employment and small business income. Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and affidavits from individual employers may be used to establish wages.

d. Vacation, sick, holiday and annual leave. Lost wages or income paid shall not be reduced by vacation, sick, holiday, or annual leave available or used by the victim due to the crime.

9.35(10) *Lost wages or income due to disability.* Compensation shall be paid for lost wages incurred by an eligible crime victim within two weeks after injury from crime or an eligible survivor of a homicide victim for up to five days within two weeks after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to the spouse, child, or parent of the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time shall submit a disability statement from a licensed physician for a physical injury or an injury related to mental health, or from a licensed mental health provider as included in paragraph 9.35(3)"a" for an injury related to mental health. Compensation shall be made for lost wages under the following circumstances:

a. Victim injured. Compensation may be paid when the victim cannot work due to injury from crime.

b. Lost hire income. Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until released to work. Required documentation includes a signed affidavit by the employer.

c. Employment terminated. Compensation may be paid when the victim is terminated from employment as a result of crime-related injuries, until released to seek work.

d. Unemployment eligible. Compensation may be paid for the difference between the victim's gross wage and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. Unemployment ineligible. Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is released to work.

f. Worker compensation benefit eligible. Compensation may be paid for the difference between the victim's gross wage and the worker compensation benefit when the victim is unable to work because of injury from crime and is found to be eligible for worker compensation benefits.

g. Medical and counseling appointments. Compensation may be paid to a primary victim, the parent or guardian of a minor aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

9.35(11) *Lost wages or income during investigation and prosecution.* Compensation may be paid for lost wages incurred by an eligible primary victim, survivor of a homicide victim as described in Iowa Code section 915.86(8), parent or guardian of a minor aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime including, but not limited to, participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(12) *Residential crime scene cleanup.* Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene, which includes a home, or a private vehicle in which the crime was committed. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the value of property which is essential to the victim and which is held by law enforcement for evidentiary purposes. Cleaning a residential crime scene does not include replacement or repair of property damaged in the crime.

9.35(13) *Loss of support.* Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(14) *Clothing and bedding.* Compensation may be paid for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

9.35(15) *Funeral and burial expenses.* Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible crime victim. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86(4):

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services.

b. Burial plot and vessel. Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the homicide victim as described in Iowa Code section 915.87(8) with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) *Applicant appeal.* An applicant may appeal a compensation decision as follows:

a. Appeal to director. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.

b. Appeal to board. An applicant may appeal the director's decision to the board.

c. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court for judicial review within 30 days of receipt of the board's decision.

9.36(2) *Director appeal period.* An applicant shall submit to the director a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.36(3) *Board appeal period.* An applicant may file with the board a request for consideration of the director's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

9.36(4) *District court appeal period.* An applicant shall submit a petition for judicial review to the district court within 30 days of the receipt of the notice of the board's decision.

61—9.37(17A) Waiver from rules. This rule establishes a uniform process for granting waivers from rules adopted by the board governing the crime victim compensation program.

9.37(1) *When waiver is appropriate.* The board may grant a waiver from a rule the board has adopted if the board has rule-making authority to promulgate the rule, and no statute or rule otherwise controls the granting of a waiver from the rule. No waiver may be granted from a rule that defines a term. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

9.37(2) *Criteria for discretionary waivers.* The board may grant a waiver from a rule, in whole or in part, in response to a request from an applicant or on the board's own motion, as applied to a specific claim, if the board finds that:

a. The application of the rule to the claim at issue would result in hardship or injustice to the person seeking compensation; and

b. The waiver would be consistent with the public interest or the public interest will be protected by other means substantially equivalent to full compliance with the rule; and

c. The waiver in the specific case would not prejudice the substantial legal rights of any person.

9.37(3) *Board discretion.* The decision about whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors.

9.37(4) *Criteria for mandatory waivers.* In response to an applicant's request, the board shall grant a waiver from a rule, in whole or in part, as applied to the particular circumstances, if the board finds that the application of the rule in that specific case would not, to any extent, advance or serve any of the purposes of the rule.

9.37(5) *Administrative deadlines.* When the rule from which a waiver is sought establishes deadlines, the board shall balance the specific individual circumstances of the applicant with the overall goal of uniform treatment of all applicants.

9.37(6) *Conditions.* The board may condition the granting of a waiver on reasonable conditions to achieve the objectives of the particular rule in question through alternative means.

9.37(7) *Public availability of waiver decisions.* A board decision granting or denying a waiver shall be included in the board minutes with reference to the following:

- a.* The particular case and the rule or portion thereof to which the decision pertains;
- b.* The relevant facts and reasons upon which the action is based; and
- c.* The scope and operative period of the waiver if one is issued.

Subject to the provisions of Iowa Code section 17A.3(1) "e," the department shall maintain a record of all orders granting and denying waivers under this chapter. All waiver decisions shall be indexed and available to members of the public at the crime victim assistance division office.

9.37(8) *Voiding or cancellation.* A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon notice to the victim by regular mail and an opportunity to be heard, if:

- a.* The facts as stated in the request are not true or material facts have been withheld, or
- b.* The applicant has failed to comply with the conditions of the waiver.

9.37(9) *Effectiveness of waiver.* After the board issues a waiver, a person seeking compensation may rely on the terms of that waiver for the purposes of the particular case for which it was issued. A waiver shall only be effective in the case for which it is issued.

9.37(10) *Appeals from waiver decisions.* Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and the board's rules. An appeal shall be taken within 30 days of the issuance of the waiver decision unless a contrary time is provided by rule or statute.

These rules are intended to implement Iowa Code sections 915.80 through 915.94.

61—9.38 to 9.49 Reserved.

DIVISION III VICTIM SERVICES GRANT PROGRAM

61—9.50(13) *Administration of the victim services grant program.* The victim services grant program of the Iowa department of justice shall administer the victim services grants as provided in Iowa Code chapters 13 and 236. All questions, comments, requests for information, or applications for grant funds shall be directed to the victim services grant program. Requests should be addressed to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044.

61—9.51(13) Definitions. As used in this chapter:

“*Applicant*” means a victim service program providing direct services to crime victims or technical assistance to crime victim service providers that makes a request for funds from the victim services grant program.

“*Application*” means a request which complies with federal and state requirements for funds from the following:

1. The Federal Victims of Crime Act pursuant to Pub. L. No. 98-473, Title 2, Chapter 14, 42 U.S.C. Section 10601 as amended by the Federal Children’s Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).

2. The domestic abuse funding provided for in Iowa Code chapter 236.

3. The Family Violence Prevention and Services Act pursuant to the Federal Child Abuse Amendments of 1984 Pub. L. No. 98-457, 42 U.S.C. Section 10401.

4. Other grants or funds available by law for crime victim assistance.

“*Board*” means the crime victim assistance board.

“*Department*” means the Iowa department of justice.

“*Director*” means director of the crime victim assistance division of the department of justice.

“*Division*” means the crime victim assistance division of the Iowa department of justice.

“*Grant*” means a victim services grant award.

“*Grantee*” means the Iowa department of justice when it administers a grant from a federal or state agency.

“*Grant review committee*” means a department of justice committee designated to review grant applications.

“*Program*” means the victim services grant program in the Iowa department of justice.

“*RFP*” means request for proposals.

“*Subgrantee*” means any applicant receiving grant funds from this program.

“*Victim*” means a crime victim as defined in Iowa Code section 912.1(5).

61—9.52(13) Program description. Any eligible public agency or nonprofit organization or a combination thereof may apply for and receive a grant through the program. The program shall operate as a competitive grants program and be administered by the department. Contractual agreements specifying the terms of the grant award shall be executed between the department and approved applicants.

61—9.53(13) Availability of grants. In any year in which federal or state funds are available, the department shall administer grants to eligible applicants. The amount of the funds awarded shall be contingent upon the funds available. The director shall announce the opening of an application period through public notice. Applications must be submitted by the designated due date.

61—9.54(13) Application requirements. Applicants shall submit applications to: Crime Victim Assistance Division, Iowa Department of Justice, Old Historical Building, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the department and shall be available upon request to all interested parties.

9.54(1) In order to be included in the review process and considered for funding, an application shall be received in the offices of the division by 4:30 p.m. on the due date. Applications may be delivered to the division during regular business hours anytime prior to the deadline. An extension of the filing deadline may be requested of the director or grant administrator prior to the deadline and may be granted for good cause. The determination of a good cause extension by the division shall be final.

9.54(2) An applicant shall have on file with the department current copies of the applicant’s table of organization and articles of incorporation.

9.54(3) An applicant shall have on file with the department evidence of any insurance coverage the applicant carries for liability or property.

61—9.55(13) Contents of application. Each application shall contain the following information:

9.55(1) A brief narrative describing the agency or unit of local government requesting funding.

9.55(2) A description of services for which funding is being requested which includes, but is not limited to, the following:

- a.* The geographical area to be served.
- b.* The target population to be served.
- c.* Victim eligibility requirements.
- d.* Description of substantial financial support from other sources.
- e.* Intended use of volunteers, if any.
- f.* Stated goals and objectives of the program.
- g.* A description of the proposed victim service or technical assistance including a time schedule for implementation.
- h.* The amount of grant funds requested.
- i.* The amount of cash or in-kind resources or combination thereof which is committed as required by the program.
- j.* A description of how the proposed victim service or technical assistance will provide or improve direct services to victims of crime.
- k.* Proof of coordination with appropriate agencies at the local level.
- l.* A total program budget for all services provided by the applicant.
- m.* A proposed budget for the requested grant funds.
- n.* A list of other anticipated sources of income, including written commitments, if possible, and plans for continued funding of the grant funded activities.
- o.* Other information identified in the RFP.
- p.* Signed certified assurances as required by statute or regulation.

61—9.56(13) Eligibility requirements. Funds must be used only to provide services to victims of crime or technical assistance to victim service providers. Program grants cannot be used to supplant other available or mandated funds. An applicant must meet the following requirements:

9.56(1) Be operated by a public agency or nonprofit organization, or combination thereof, that provides services to crime victims. Services provided to victims may include but are not limited to crisis intervention services, law enforcement and court advocacy, group and individual counseling, transportation, and information and referral services. An applicant providing services to victims of domestic abuse must also have the capacity to provide or arrange safe shelter for victims and their children. An applicant providing services to victims of sexual assault must have the capacity to provide support to victims at the time of an evidentiary sexual abuse examination.

9.56(2) An existing program must be able to document results of prior programming that demonstrates that the needs of victims have been met effectively and that the applicant has financial support from other sources.

9.56(3) Promote within the community a coordinated public and private effort to assist victims.

9.56(4) Be an equal opportunity employer and provide services on an equal opportunity basis.

9.56(5) Comply with applicable federal and state statutes or rules, any requirements specified in the grant between the department and any outside funding source, and any requirements in the RFP or any other contractual document.

9.56(6) Assist victims in seeking state compensation benefits.

9.56(7) Have a grievance procedure established for victims, employees and volunteers.

9.56(8) Ensure that all employees and volunteers that provide direct services to victims are trained as victim counselors as defined in Iowa Code section 236A.1.

9.56(9) Provide services within the geographic service area without regard to a victim's ability to pay.

61—9.57(13) Selection process. The department shall conduct a preliminary review of each application to ensure that the applicant is eligible, the application is complete, and the proposed victim service or technical assistance is consistent with the division's mission of providing assistance to crime victims and crime victim programs.

9.57(1) A grant review committee shall be established by the department for the purpose of reviewing grant applications. The committee shall submit recommendations for grant awards to the director and board.

9.57(2) The board shall determine final subgrantees and grant awards to the extent that funds are available and to the extent to which applications meet the RFP criteria. The board may reject any or all applications.

61—9.58(13) Notification of applicants. Applicants shall be notified within 60 days after the application due date whether their application has been denied or the board is interested in negotiating a contract regarding their proposal.

61—9.59(13) Request for reconsideration.

9.59(1) Applicants may file a request for reconsideration of the denial or amount of an award with the board. The request for reconsideration must be submitted within ten working days of the date the notice of decision is mailed or otherwise issued by the director to the subgrantee. The request must state adequate grounds for reconsideration. The board or a committee designated by the board chair shall review the request and evidence submitted in a timely manner. A decision of the board or designated committee shall constitute final agency action.

9.59(2) At the time a request for reconsideration is received by the director, notice that a request for reconsideration has been filed shall be sent to all approved applicants whose funds may be affected by the request.

9.59(3) Funds shall not be disbursed pending a request for reconsideration to the extent that the funds are affected by the outcome of the request. All applicants who would be adversely affected shall be notified if a request for reconsideration is approved and grant awards shall be reduced as necessary.

61—9.60(13) Contract agreement.

9.60(1) A contract shall be negotiated by the department and the applicant.

9.60(2) The department or the board may require modification of the proposed program, submission of further information or documents, or other contingency on the part of the applicant prior to entering into contract. The required modification, information, document, or contingency shall be specified in the notification of grant award.

9.60(3) The applicant or the department may request a modification of the program budget to reflect the amount, expenses and activities allowed by the grant award. Both parties must agree to any modification of the subgrantee program budget.

9.60(4) In the event of a state, federal, or other audit, the subgrantee shall be responsible for the audit and liable for payment of any funds required to conduct the audit, to compensate for any grant disallowance, or to repay any funds received or spent contrary to the contract, these rules, or applicable law.

9.60(5) Funds shall be spent to meet the program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

9.60(6) The subgrantee shall sign the certified assurances for the grant program at the time of application and at any time requested by the division.

9.60(7) Nothing in these rules shall be construed as limiting the remedies available to the state or the program for improper use of grant funds or other breach of the subgrantee's duties under the contract and applicable law.

61—9.61(13) Performance reports. Performance reports shall be submitted to the department from all subgrantees. Failure to submit reports by the due date shall result in suspension of financial payments to the subgrantee by the grantee until such time as the report is received. Delinquent or inadequate reports from prior grants may detrimentally influence the award of grants for the following year.

61—9.62(13) Termination. Contracts may be terminated for the following reasons:

1. Termination by subgrantee. The contract may be terminated by the subgrantee at any time during the contract period by providing notice to the department.
2. Termination by department. The department may terminate a contract upon a ten-day notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The department may terminate a contract when there is a reduction of funds by executive order or otherwise.
3. Termination for cause. If the subgrantee fails to fulfill its obligations under the agreement properly or on time, or otherwise violates any provision of the agreement, the board may terminate the agreement by written notice to the subgrantee. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the department, become the state's property. The department shall pay the subgrantee fair and equitable compensation for the satisfactory performance prior to receipt of notice of termination minus any funds owing to the department, e.g., damages for breach, improperly spent funds.

61—9.63(13) Financial statement supplied. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

61—9.64(13) Indemnification. The subgrantee shall defend, indemnify, and hold harmless the state of Iowa, its officers, agents and employees and any of the state's federal funding sources for:

1. Subgrantee's performance or nonperformance of a contract entered into or violation of these rules.
2. Subgrantee's activities with subcontractors and all other third parties, or any other act or omission by a subgrantee, its agents, officers, and employees.

61—9.65(13) Records. Subgrantees shall keep statistical records of services provided and any other records as required by the department. The department shall have immediate access to records pertaining to the contract during working hours. No notice need be provided the subgrantee prior to inspection of the records.

61—9.66 to 9.79 Reserved.

These rules are intended to implement Iowa Code chapter 912.

DIVISION IV
SEXUAL ABUSE EXAMINATION PAYMENT
[Prior to 8/8/90, see Public Health Department 641—Chapter 8]

61—9.80(915) Administration of sexual abuse examination payment. The crime victim assistance program of the department of justice shall administer the sexual abuse examination program as provided in Iowa Code section 915.41. That section states in part:

“The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing sexually transmitted disease shall be borne by the department of justice.”

Requests for payment should be addressed to: Sexual Abuse Examination Payments, Crime Victim Assistance Division, Lucas State Office Building, Ground Floor, 321 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.81(915) Definitions.

“*Administration*” means administrator of the crime victim assistance program established in the department of justice.

“*Board*” means crime victim assistance board.

“*Department*” means the Iowa department of justice.

“*Eligible claimant*” means a medical provider that provides a sexual abuse examination to a sexual assault victim. The following are eligible to file a claim with the crime victim assistance program in the event that they have made payment to a medical provider for the costs of a sexual abuse examination:

1. A victim of sexual abuse.
2. A person responsible for the maintenance of a sexual abuse victim.
3. A dependent of a victim who has died as a result of injuries sustained in a sexual assault.
4. The guardian of a sexual abuse victim.

“*Reasonable charges*” means those ordinarily charged by the provider of the service to the general public for services of a similar nature.

“*Sexual abuse*” means sexual abuse as defined in Iowa Code sections 709.1 and 726.2.

“*Sexual abuse examination*” means a medical examination provided to a woman, man, or child to collect evidence of sexual abuse victimization of that person as defined in Iowa Code sections 709.1 and 726.2 and provide treatment for the prevention of sexually transmitted disease pursuant to Iowa Code section 915.41. When applicable, the provider of a sexual abuse examination shall file a child abuse report with the Iowa department of human services as required by Iowa Code section 232.70.

61—9.82(915) Application for sexual abuse examination payment.

9.82(1) Consideration for payment. The department will consider payment upon receipt of a claim for reimbursement from a medical provider indicating that the claim is for the collection of evidence by sexual abuse examination. In the case that a victim, guardian of a victim, person responsible for the victim, or dependent of a victim who died of injuries sustained in a sexual assault has paid part or all of the charges incurred, a copy of the provider bill and documentation of personal payment of the bill must be submitted for reimbursement. An application for sexual abuse examination payment must include the federal identification number or social security number of the claimant.

9.82(2) Application filing. To apply for payment under the sexual abuse examination program, the form or bill submitted must identify the sexual assault victim by name, birth date, and patient number, indicate that the claim is for a sexual abuse examination, and itemize all services rendered and the fee for each service.

61—9.83(915) Computation of sexual abuse examination payments.

9.83(1) *Payment for examination.* The department shall make payment for sexual abuse examinations, as appropriate, for services including, but not limited to:

a. Examiner's fee for collection of:

- (1) Patient's medical history;
- (2) Physical examination;
- (3) Collection of laboratory specimens;
- (4) Return visits to test for sexually transmitted disease;
- (5) Treatment for the prevention of sexually transmitted disease.

b. Examination facility.

- (1) Emergency room, clinic room or office room fee;
- (2) Pelvic tray and medically required supplies.

c. Laboratory collection and processing of specimens for: criminal evidence; sexually transmitted disease; and pregnancy testing.

9.83(2) *Provider payment.* The department will pay up to \$300 for the examination facility and \$200 for examiner fees. Any charges in excess of these amounts will require additional documentation from the provider. The crime victim assistance program will pay only those charges determined by the department to be reasonable and fair.

The Iowa department of public safety division of criminal investigation makes sexual abuse examination kits available to health care providers at no cost.

61—9.84(915) Victim responsibility for payment. A victim of sexual abuse is not responsible for the payment of the costs of a sexual abuse examination determined to be eligible for payment by the department. A medical provider shall not submit any remaining balance after sexual abuse examination program payment to the sexual abuse victim.

61—9.85(915) Sexual abuse examination—right to restitution. In all criminal cases under Iowa Code chapter 709 and sections 726.2 and 710.2 in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, restitution may be ordered from the offender to the crime victim assistance program for the cost paid by the department for a sexual abuse examination rendered to the victim of that crime pursuant to Iowa Code section 910.2.

61—9.86(915) Erroneous or fraudulent payment—penalty. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipients, the recipient is liable for repayment of the reparation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date of payment, the recipient is not responsible for repayment to the department.

If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment to the department.

61—9.87(915) Right to appeal. An eligible claimant who disagrees with the department's decision concerning payment or amount of payment has the right to request reconsideration of that decision by the crime victim assistance board. The request for reconsideration must be received by the department within 60 days after the decision of the department is mailed.

Rules 9.80(915) to 9.87(915) are intended to implement Iowa Code section 915.41.

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